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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,002	10/30/2001	Ulf Schroder	SCHR300/ REF	6626
7590	05/19/2004			
Bacon & Thomas 625 Slaters Lane - 4th Floor Alexandria, VA 22314-1176				
EXAMINER				
FORD, VANESSA L				
ART UNIT		PAPER NUMBER		
1645				

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/926,002

Applicant(s)

SCHRODER ET AL.

Examiner

Vanessa L. Ford

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11, 13, 14, 20, 22, 23, 29, 31, 32, 38 and 40 is/are rejected.
- 7) ☒ Claim(s) 12, 15-19, 21, 24-28, 30, 33-37, 39 and 41-46 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicant's amendment and response filed October 3, 2003 is acknowledged. Claims 13, 14, 16, 22, 23, 31 and 40 have been amended. Claims 1-10 have been cancelled.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in the prior Office Action.

### ***Objections and Rejections Withdrawn***

3. In view of Applicant's amendment the following rejections and objections are withdrawn:
  - a) Objections of claims 13-14, 16, 22-23, 31-32 and 40, page 3, paragraph 3.
  - b) Rejection of claims 11-36 under 35 U.S.C. 103(a), pages 4-7, paragraph 5.
  - c) Rejection of claims 11-37 under 35 U.S.C. 103(a), pages 7-8, paragraph 6.
  - d) Rejection of claims 38-45 under 35 U.S.C. 103(a), pages 8-11, paragraph 7.
  - e) Rejection of claims 38-46 under 35 U.S.C. 103(a), pages 11-12, paragraph 8.

***Rejection Maintained***

4. The rejection of claims 11, 13, 14, 20, 22, 29, 31, 32, 38 and 40 under 35 U.S.C. 112, second paragraph is maintained for the reasons set forth on page 4 paragraph 4 of the previous Office Action.

The rejection was on the ground that 4. Claims 11, 13, 14, 20, 22, 29, 31, 32, 38 and 40 recite the term "derived from". It is unclear as to what the applicant is referring? Thus, the metes and bounds of "derived from" cannot be ascertained. Clarification as to the meaning of this term is required.

Applicant urges that one of ordinary skill in the art would fully appreciate the meaning of the phrase "derived from".

Applicant's arguments filed October 3, 2003 have been fully considered but they are not persuasive. It is the Examiner's position that the metes and bounds of the phrase "derived from" cannot be ascertained. One of ordinary skill in the art would not appreciate the meaning of the phrase since the phrase is not defined in the instant disclosure. Therefore, the rejection is maintained.

***New Grounds of Rejection***

***Claims Objections***

5. Claims 25, 34 and 43 are objected to because of the following informality: The claims recite "toroid" which should be changed to "toxoid". Correction is required.

6. Claims 12, 15-19, 21,24, 26-28, 30, 33, 35-37, 39, 41, 42 and 44-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 23 and 41 are rejected under 35 USC 112 second paragraph for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 23 and 41 recite the phrase "derived from". ". It is unclear as to what Applicant is referring? Clarification is required.

8. Claims 11, 20, 29 and 38 are rejected under 35 USC 112 second paragraph for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 11, 20, 29 and 38 recite the term "possibly". It is unclear as to what Applicant is referring? The term "possibly" is a potential. The limitation is not definitely defined. In other words, the limitation may or may not be present. Clarification is required.

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### **Conclusion**

9. Any inquiry of the general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.


Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Office Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for the Group 1600 is (703) 872-9306.

Any inquiry concerning this communication from the examiner should be directed to Vanessa L. Ford, whose telephone number is (571) 272-0857. The examiner can normally be reached on Monday – Friday from 9:00 AM to 6:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (571) 272-0864.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Vanessa L. Ford  
Biotechnology Patent Examiner  
May 12, 2004



James D. Wilson  
Supervisory Patent Examiner  
Art Unit 1623